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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
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)  
Advanced Television Systems )  
and Their Impact upon the )  
Existing Television Broadcast )  
Service )  
\_\_\_\_\_ )

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MM Docket No. 87-268

Comments On Sixth Further Notice of  
Proposed Rulemaking

BET HOLDINGS, INC.

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## **Executive Summary**

BET Holdings, Inc. ("BET") is a cable television entertainment business that reaches over 45 million cable households through its cable programming services, BET Cable Network, BET on Jazz, and Action-Pay-Per-View. BET also produces feature length films through its joint ventures, BET Film Productions, BET Pictures, and United Image Entertainment. This year, BET partnered with Microsoft to develop on-line programming and interactive software programs for African-American consumers, announced the launch of a new premium movie channel, BET Movies/Starz 3, and the development of a new interactive theme restaurant, BET Soundstage. BET is the only publicly traded media company that primarily targets African-American consumers.

At a time when the federal government is reducing spending and considering even more significant spending cuts in important social programs, BET strongly believes that Congress and the FCC should not award, without compensation, public spectrum worth billions of dollars to private owners who stand to profit handsomely from such a license. FCC economists have estimated the value of DTV licenses to be as much as \$90 billion, which can be put to many uses in addition to reducing the national debt, such as educating and training people trying to move from welfare-to-work, research and development, rebuilding the infrastructure, retraining displaced workers, and providing educational and small business loans. Notwithstanding, BET will support FCC actions in this docket that have the overall effect of providing significant Digital Television license ownership and joint-venture/partnering opportunities for new entrants, particularly minorities and women. The increasing number of minority and women consumers in the broadcast viewing audience should be recognized by industry and the FCC as one of several

public interest reasons for ensuring that Digital TV license opportunities are provided to new entrants. Current statistics regarding minority ownership in the broadcast industry supports the need for more robust ownership opportunities for minorities in the new Digital TV broadcast market. According to U.S. Commerce Department minority ownership statistics, minority ownership of television broadcast stations is stuck at 3%--2.2% for blacks, .74% for Hispanics, .08% for Asians, and 0% for Native Americans. Meanwhile, ownership of commercial television broadcast stations is being aggregated among fewer and fewer large national, regional or global media conglomerates; as well, our system of noncommercial broadcast stations is increasingly burdened by constant fiscal attack and tighter budget constraints. Thus, the FCC must uphold its public interest obligation to promote diversity of ownership for new entrants as it considers rules and channel allocations for new Digital TV services in docket 87-268 --- one of the last significant FCC broadcast TV licensing opportunities in local markets before the turn of the century.

The world of broadcasting and communications has changed rapidly during this decade. Two of the more recent market factors contributing to this change have been: (1) rapid improvements in digital technology and (2) rapid aggregation of broadcast property ownership subsequent to passage of the 1996 Telecommunications Act. Digital technology improvements allow communications companies to do more with less spectrum; many more services can be offered over a 6 Mhz channel of VHF or UHF spectrum today than at the beginning of this decade. Improvements in spectrum efficiency appear to be growing exponentially, along with improvements in digital communications technologies. The FCC must account for this technological change as it considers the framework for licensing Digital TV broadcast services.

Significant aggregation of television broadcast ownership is the norm in the current media marketplace. Only 6% of the current television license holders are the original licensees. Few, if any, new entrants have realistic opportunities to obtain a new TV broadcast license. Minorities, and to some extent women, have been marginalized with respect to ownership and control of TV broadcast licenses. As we approach the 21st century, the number of minority consumers is increasing in the U.S. and throughout the world. Despite the expansion of various media outlets such as cable, Direct Broadcast Satellite, and wireless cable, the FCC must recognize the continuing significant role that the TV broadcast industry plays in our society. Thus, as we approach the millennium, it is imperative that the FCC uphold its responsibility to recognize the need for diversity of television broadcast ownership and adopt Digital TV licensing rules that will provide realistic and meaningful significant ownership opportunities for new entrants, particularly minorities and women.

BET proposes that the FCC uphold its diversity obligations in several areas in this docket.

First, pursuant to Sections 307 and 336 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151 et seq. ("Act"), the FCC should promote spectrum efficiency and spectrum flexibility for Digital TV broadcast services. In so doing, the FCC can support its efforts under Sec. 307(b) of the Act to diversify ownership of Digital TV licenses in local markets throughout the United States and its territories. By permitting spectrum flexibility and requiring spectrum efficiency, the Act can enable new entrants to offer program services to the public in several ways: 1.) requiring incumbent commercial broadcast licensees who are assigned Digital TV channels to offer ancillary or supplementary services via a joint

venture, local marketing or other type of sublicense arrangement with minority- or women-owned businesses; 2.) establishing incentives for incumbent noncommercial TV broadcast licensees who are assigned Digital TV channels to form partnerships with new entrants, thus allowing the noncommercial licensees to offer a noncommercial TV channel, while also deriving revenue from ancillary or supplementary services performed by the new entrants; and 3.) establishing multiple service offerings via new Digital TV licensing opportunities dedicated to new entrants through auction. The concept of spectrum flexibility should include geographic partitioning, spectrum disaggregation, franchising, supplementary service local marketing agreements or joint ventures.

Second, pursuant to Sec. 309(j) of the Act, the FCC should make channels available specifically for new entrants to acquire Digital TV licenses and provide other supplementary/ancillary services. There are several means by which the FCC can take this action: 1.) adopt the Core Spectrum Option outlined in this Notice and immediately recover and repackage channels 60-69 for new licensing opportunities for Digital TV services (such licenses can be offered for auction to new entrants); 2.) make all vacant Digital TV allocations available to new entrants via auction following adoption of an Order in this proceeding allocating Digital TV channels to all existing full-service commercial or non-commercial broadcasters; and 3.) allow LPTV and TV Translator operations to partner with new entrants in an auction for any vacant Digital TV channels made available among channels 7-51, 52-59, and 2-4.

Third, pursuant to Sec. 336 of the Act, the FCC should impose a spectrum fee on incumbent broadcasters who are assigned a Digital TV channel, but provide diversity incentives for incumbents to partner with new entrant minority or women-owned businesses as a condition

of providing supplementary or ancillary services by: (1) providing a spectrum fee credit or waiver; (2) waiving attribution limits or restrictions; and (3) providing a credit toward other broadcast public interest obligations such as EEO, Children's TV, Political broadcasting, Public Affairs programming, and Non-commercial TV Broadcast limits on program sponsorships.

Fourth, for any auction of Digital TV channels to new entrants, provide incentives for incumbent broadcasters to partner with new entrants for an auction of DTV licenses by: (1) waiving attribution limits; (2) allowing joint-marketing agreements; and (3) encouraging programming production and syndication partnerships, as a condition for the flexibility to provide supplementary/ancillary services.

The FCC has an opportunity to uphold its public interest obligation to diversity of TV broadcast ownership in this Docket. For minorities and women, this is the last major opportunity to gain access to a piece of the broadcast communications bridge to the 21st Century. BET encourages the Commission to take the actions outlined in this filing.

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MM Docket No. 87-268

**Comments On Sixth Further Notice of  
Proposed Rulemaking**

BET Holdings, Inc. ("BET") hereby submits its comments to the Sixth Further Notice of Proposed Rulemaking in the Federal Communications Commission's ("Commission") Advanced Television docket (Digital TV).<sup>1/</sup> BET is a cable television entertainment business that reaches over 45 million cable households through its cable programming services, BET Cable Network, BET on Jazz, and Action Pay-Per-View. BET also produces feature length films through its ventures with BET Film Productions, BET Pictures, and United Image Entertainment. BET has also partnered with Microsoft to develop on-line programming and interactive software products for African-American market consumers.

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<sup>1/</sup> Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, 11 FCC Rcd 10968 (1996) ("Sixth FNPRM").



I. The Commission's Eligibility Proposal Should Promote Diversity of Viewpoints and Ownership in the DTV Service and Recovered Spectrum Allocation

A. The Commission is obligated to make fair, efficient and equitable distribution of broadcast licenses.

Under Section 307(b) of the Communications Act of 1934, as amended,<sup>2/</sup> the Commission is required to "make such distribution of licenses, frequencies, hours of operation, and of power among the several states and communities as to provide a fair, efficient, and equitable distribution of [broadcast] service to each of the same."<sup>3/</sup> The Commission has also found that the "diversification of mass media ownership serves the public interest by promoting diversity of program and service viewpoints, as well as by preventing undue concentration of economic power."<sup>4/</sup> Although § 336(a)(1) of the Act requires the Commission to provide the initial allotment of Digital Television channels ("DTV") to incumbent full service broadcast licensees and permittees,<sup>5/</sup> BET believes that the Commission must also promote distribution of DTV broadcast licenses to new entrants.<sup>6/</sup> The Commission can enhance diversity of DTV ownership

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<sup>2/</sup> 47 U.S.C. § 151, et. seq. ("Act").

<sup>3/</sup> 47 U.S.C. § 307(b).

<sup>4/</sup> FCC v. National Citizens Committee for Broadcasting, 436 U.S. 775, 780 (1978).

<sup>5/</sup> "[I]f the Commission determines to issue additional licenses for advanced television services, the Commission -- (i) should limit the initial eligibility for such licenses to persons that, as of the date of such issuance, are licensed to operate a television broadcast station or hold a permit to construct such a station. . . ." 47 U.S.C. § 336(a)(1), adopted in Telecommunications Act of 1996, Pub. L. No. 104-104, Section 201, 110 Stat. 56 (1996).

<sup>6/</sup> 47 U.S.C. §§ 157, 316. Section 157 states "it shall be the policy of the United States to encourage the provision of new technologies and services to the public." Section 316(a)(1) gives the Commission authority to modify any license or construction permit if the Commission determines such action "will promote the public interest, convenience, and necessity." The Commission also has flexibility to determine initial eligibility for licensees. See United States v. Storer Broadcasting Co., 351 U.S. 192 (1956).

under its Section 307 authority in several areas in this docket: (1) the Commission should adopt spectrum flexibility rules that promote partnerships, joint ventures, and local marketing arrangements between incumbent TV broadcasters and minority- and women-owned businesses, (2) allow geographic partitioning and spectrum disaggregation for ancillary and supplementary services, and (3) provide for early recovery and auction of spectrum for new entrants.

BET encourages the Commission to uphold its § 307(b) public interest obligations by providing DTV license opportunities for new entrants and declining to extend its initial eligibility to incumbent licensees that are bankrupt, off-the-air, or otherwise unable to convert to DTV. As many commenters have shown, the transition to digital will involve extensive capital and experience.<sup>7/</sup> Failure to thrive in an NTSC environment would be strong evidence of inability to succeed in the digital environment. Instead, such channels are better recovered and made available to new entrants via auction for DTV and other supplementary/ancillary services.

B. The Commission has the statutory authority to promote spectrum flexibility.

Pursuant to Sections 157, 316, and 336(a)(2) of the Act, the Commission has the statutory authority to permit spectrum flexibility for DTV licensees.<sup>8/</sup> Various commenters in

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<sup>7/</sup> Various estimates of the cost to convert to digital television range from \$750,000 to \$10 million. See, e.g., Comments of the Digital HDTV Grand Alliance on the Commission's Fourth Further Notice of Proposed Rulemaking and Third Notice of Inquiry, 10 FCC Rcd 10541 (1995) ("Fourth FNPRM"), filed on November 20, 1995.

<sup>8/</sup> Communications Act of 1934, as amended, 47 U.S.C. §§ 157, 316, 336(a)(2). Section 157 of the Act states "it shall be the policy of the United States to encourage the provision of new technologies and services to the public." Section 316(a)(1) gives the Commission authority to modify any license or construction permit if the Commission determines such action "will promote the public interest, convenience, and necessity." As the Commission noted in its Fourth FNPRM, "this section of the Act allows the Commission to modify licenses as the public interest requires." Section 336(a)(2) of the Act authorizes the Commission to permit broadcast licensees to provide ancillary and supplementary services over their DTV frequencies ("[The Commission]

this docket urged the Commission to adopt spectrum flexibility for incumbents.<sup>9/</sup> If spectrum flexibility is used to provide DTV supplementary/ancillary services for a fee, the Commission must collect a spectrum fee pursuant to Section 336(e)(1) and (2) of the Act that recovers for the public a portion of the value of the spectrum, and that equals but does not exceed (over the term of the license) the amount that would have been recovered had such services been auctioned.<sup>10/</sup> BET urges the Commission to allow flexible spectrum use for DTV licenses, and adopt a spectrum fee structure for incumbent broadcasters that provides strong incentives to partner with

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shall adopt regulations that allow the holders of such [DTV] licenses to offer such ancillary or supplementary services on designated frequencies as may be consistent with the public interest, convenience, and necessity.")

<sup>9/</sup> Various parties have supported spectrum flexibility. See, e.g., Comments of National Cable Television Association, filed July, 1995 and Comments to Fourth FNPRM filed by Microsoft ("Licensees should be given maximum flexibility to provide a wide array of services. . . ."); Electronics Industry Association ("[w]e believe that broadcasters should be accorded flexibility in their use of ATV spectrum. . . ."); Information Technology Industry Council ("As long as the broadcasters are required to provide some minimum amount of HDTV programming each day, ITI supports allowing broadcasters to use the spectrum provided for ATV to provide other broadcast-like services, including data transmission and other ancillary and supplementary uses").

<sup>10/</sup> "(1) Services to which fees apply -- [I]f the regulations prescribed pursuant to subsection (a) [permitting DTV licensees to provide ancillary and supplementary services] on a designated frequency -- (A) for which the payment of a subscription fee is required in order to receive such services, or (B) for which the licensee directly or indirectly receives compensations from a third party in return for transmitting material furnished by such third party. . . the Commission shall establish a program to assess and collect from the license for such designated frequency an annual fee or other schedule or method of payment that promotes the objectives described in subparagraphs (A) and (B) of paragraph (2). (2) Collection of fees. -- The program required by paragraph (1) shall -- (A) be designed (i) to recover for the public a portion of the value of the public spectrum. . . (B) recover for the public an amount that, to the extent feasible, equals but does not exceed (over the term of the license) the amount that would have been recovered had such services been licensed pursuant to the provisions of Section 309(j) of this Act. . . " 47 U.S.C. § 336(e)(1) and (2).

new entrants for supplementary/ancillary services, particularly minority- and women-owned entities.

C.     The Commission's DTV Rules Can Counteract the Effects of the Freeze on New Broadcast Applications, Mega-Mergers, and Loss of LPTV to Promote Diversity in Media Ownership

The Commission should adopt DTV rules that counteract the loss of diversity of new ownership opportunities in TV broadcasting. The current environment discourages the Commission's goals to promote diversity. The DTV statutory eligibility limit freezes the status quo with respect to broadcast ownership.<sup>11/</sup> U.S. Commerce Department minority ownership statistics show that minority ownership of television broadcast stations is stuck at 3%: 2.2% for blacks; .74% for Hispanics; .08% for Asians; and 0% for Native Americans.<sup>12/</sup> Minority- and women-owned businesses can no longer enter the NTSC television market because the Commission will not accept applications for new NTSC stations and petitions for rulemaking that propose to amend the existing TV Table of Allotments.<sup>13/</sup> These limitations dovetail an unprecedented number of mergers and acquisitions in the broadcast field. As of August, 1996, proposed station sales numbered 722 (66 television stations, 239 combinations, 265 FM stations, and 152 AM stations), compared to 587 in all of 1995.<sup>14/</sup> Most involve consolidations of large

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<sup>11/</sup> See Comments in Fourth FNPRM filed by Minority Media and Telecommunications Council on July 21, 1995.

<sup>12/</sup> Minority Commercial Broadcast Ownership in the United States, The Minority Telecommunications Development Program, National Telecommunications and Information Administration, United States Department of Commerce, April, 1996.

<sup>13/</sup> Sixth FNPRM at 11012.

<sup>14/</sup> "Changing Hands," Broadcasting and Cable, p. 38, August 19, 1996.

media groups that limit diversity of ownership in media.<sup>15/</sup> In a Freedom Forum gathering in July, 1996, participants discussed the impact of mega-mergers, noting that--

media concentration "really diminishes the potential for diversity." Because African Americans, Asians, Hispanics and other minorities entered broadcasting late in the game, it will be "hard [for them] to be a part of this change."<sup>16/</sup>

Of course, the Commission has also expressly recognized that minorities are underrepresented in television ownership.<sup>17/</sup> New minority ownership opportunities in broadcasting have also been reduced in light of recent statutory changes and changes in Commission policy.<sup>18/</sup>

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<sup>15/</sup> See, e.g., "TW, Turner moving in before marriage," Broadcasting and Cable, July 15, 1996 (discussing Time Warner and Turner \$7.5 billion merger); "Murdoch Claims New World," Broadcasting and Cable, p.6, July 22, 1996 (discussing Fox/NewWorld \$3 billion merger); "Big Deals," Broadcasting and Cable, p. 32 (discussing River City Broadcasting LP/Sinclair Broadcast Group, Inc. \$210 Million merger); "King, New Worlds to Collide," Broadcasting and Cable, p. 16, July 15, 1996 (discussing 1.5 billion stock swap deal).

<sup>16/</sup> "Freedom Forum Ponders Mega-mergers," Broadcasting and Cable, p. 30, July 22, 1996. In addition, minority broadcasters are largely represented in the Low Power Television Service ("LPTV"), which will be displaced by DTV. There were 31 full power TV stations owned by minorities but 124 LPTV stations owned by minorities. See, Comments of the Association of Black Owned Television Stations to the Commission's Fourth FNPRM, filed on November 20, 1995. Some of the niche programming LPTV provides are (1) the only full-time Spanish language television broadcast services in the Washington, D.C., market; (2) Louisville, Kentucky's only African-American television station; and (3) providing the only specialized network of stations to broadcast programming of interest to disabled persons. See Comments of the Community Broadcasters Association, filed November 20, 1995 in response to Fourth FNPRM. Various other commenters noted their niche program markets, including: Video Jukebox Network, Inc., Network One, AsiaVision, Inc., Association of Black Owned Television Stations, and Hispanic Broadcasters of Tucson.

<sup>17/</sup> See, e.g., Fourth FNPRM at 10545, ("[W]e seek comment on the potential impact our proposal would have on the Commission's long standing policy of fostering programming and ownership diversity. Specifically, we seek comment on what measures. . . the Commission may adopt to include new entrants. . . in digital television").

<sup>18/</sup> Tax certificates for minority sales were abolished in 1995. The Self-Employed Persons Health Care Extension Act of 1995, Pub. L. No. 104-7 (April 11, 1995). The Commission also eliminated race and gender preferences for PCS applicants, prior to conducting a study to

BET strongly urges the Commission to encourage partnerships between incumbent television DTV broadcasters and new entrants, particularly minority- and women-owned businesses by requiring incumbent broadcasters who are assigned new DTV licenses to form partnerships with minority- and women-owned new entrants, as a condition for the flexibility to provide supplementary/ancillary services. The Commission can use the DTV proceeding to offset the trend toward significant concentration of TV ownership by adopting DTV rules that promote ownership opportunities for new entrants, particularly minority- and women-owned businesses.

II. The Commission Should Adopt the Core Spectrum Allocation and Other Mechanisms to Recover Spectrum Quickly and Efficiently in Order to Conduct Auctions or Collect Spectrum Fees in a Manner that Encourages New Entrant Participation.

A. The Core Spectrum Option will promote diversity by allowing for efficient reallocation of recovered spectrum.

BET supports the Commission's Core Spectrum Option (Channels 7-51) because it will allow efficient recovery and repackaging of the channel 60-69 spectrum for DTV and other flexible uses. Such a plan mitigates costly relocation of incumbents and would make contiguous blocks of spectrum available for auction quickly. As noted in the Sixth FNPRM, the Core Spectrum Option allows broadcasters to establish early, permanent channel identification and eliminates the need for most broadcasters to move a second time.<sup>19/</sup> In contrast, the Alternative Spectrum Option places 350 allotments in Channels 60-69, which will make the spectrum

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determine if such preferences would withstand the strict scrutiny standard set forth in Adarand v. Peña, 115 S.Ct. 2097 (1995). Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum, 11 FCC Rcd 7824 (1996).

<sup>19/</sup> Sixth FNPRM at 10979-10980.

recovery process more time consuming and expensive, as many broadcasters move a second time in order to allow spectrum recovery.<sup>20/</sup> BET submits that the Alternative Spectrum Option is inconsistent with the Communications Act's requirement to ensure a "rapid, efficient, nation-wide" system of communications.<sup>21/</sup> Consistent with the "Core Spectrum Area" concept, the Commission should allow special transition provisions for broadcasters located outside the core area, but only to the extent that they do not interfere with efficient recovery of channels 60-69. For example, early transition to DTV should be allowed when the incumbent NTSC station is outside the Core Spectrum Area but the DTV allotted channel is inside the Core Spectrum Area.<sup>22/</sup>

B. The Commission should give relative preference to new DTV operations in the DTV allotment table

BET supports the Commission's proposal to give relative preference to new DTV operations in the DTV allotment table when a choice must be made between providing greater service area for a new DTV allotment or minimizing interference to an existing NTSC allotment. BET supports the Commission's initial proposal because maximizing DTV's service area will result in rapid, comprehensive DTV coverage, thereby encouraging the transition to DTV. If the

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<sup>20/</sup> The cost of relocation can be substantial. For example, in the Commission's microwave relocation rules for the 2 GHz band, the Commission capped allowable expenses at \$250,000 per microwave link, with an additional \$150,000 if a new tower is required. Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, 11 FCC Rcd 8825 (1996). The cost of constructing a new digital television station will vary from \$750,000 to \$1 million for the equipment alone. Thus additional costs for relocation must be mitigated for new entrants as much as possible.

<sup>21/</sup> 47 U.S.C. § 151.

<sup>22/</sup> The National Cable Television Association has supported early recovery and reallocation of NTSC spectrum. See Comments filed in DTV proceeding July, 1995.

public is to be convinced that DTV is a worthwhile investment, it must not be placed in a position where its market coverage is inferior to NTSC television. As the Commission noted, some interference will result from DTV allotments regardless of how the frequencies are distributed.<sup>23/</sup> The Commission should favor DTV in order to encourage transition to digital service.

- C. The Commission should adopt the proposed Core Spectrum Allocation reflected in the draft Table of Allotments.
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BET supports the Commission's proposed Core Spectrum Allocation reflected in the draft Table of Allotments, because it accommodates all existing full service broadcasters, but also promotes efficient, rapid recovery of vacated spectrum. Such a system is far superior to the "first-come, first-served" approach originally proposed by the Commission. The draft Table of Allotments has the added benefit of being engineered for technical interference. The careful consideration of technical interference reflected in the table could be destroyed if the Commission adopted the "first come, first served" approach. The draft Table will also simplify the relocation process, and may have the added benefit of expediting transition to digital by eliminating uncertainty for broadcasters.<sup>24/</sup> BET supports negotiated allotments and assignments for existing broadcasters to address issues unique to the communities they serve. However, such negotiated agreements must not be allowed to interfere with the reclamation of NTSC spectrum in the Core Spectrum plan.

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<sup>23/</sup> Sixth FNPRM at 10984.

<sup>24/</sup> Id. at 10985-6.



- D. The Commission should allocate DTV frequencies in a way that equalizes service areas among carriers.
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BET supports the Commission's original proposal to allocate DTV frequencies in a way that equalizes service areas among different carriers. If the Commission equalizes the service areas, new entrants that acquire spectrum through acquisition will be able to more effectively enter the DTV market. Service equalization will allow new entrants to acquire or joint venture with DTV stations that have market coverage comparable to other TV stations within a market.

- E. The Commission should make all vacant DTV allocations available to new entrants via auction following adoption of an Order that allocates DTV channels to all existing full-service commercial or non-commercial broadcasters.
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The Commission should make all vacant DTV allocations available to new entrants via auction following adoption of an Order in this proceeding that allocates DTV channels to all existing full-service commercial or non-commercial broadcasters. BET submits that assignment of a DTV channel to a vacant NTSC commercial or noncommercial allotment is not the most efficient use of the spectrum. BET proposes that such vacant DTV allotments be recovered by the Commission, and made part of an auction to new entrants for DTV and other supplementary/ancillary services.

- F. The Commission should adopt DTV rules that encourage partnerships between non-commercial stations and new entrants.
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Commission rules promoting partnerships, joint ventures, and other business arrangements between new entrants and incumbent DTV noncommercial broadcasters should be adopted. The revenue generated from supplementary/ancillary DTV services could provide necessary incentives for noncommercial/new entrant partnerships and additional funding for noncommercial broadcast DTV operations.<sup>25/</sup>

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<sup>25/</sup> See also Comments of Association of America's Public Television Stations and the Public Broadcasting Service on Fourth FNPRM, filed November 20, 1995 with regard to funding needs

- G. The Commission should adopt rules that encourage LPTV and TV translator operations to partner with new entrants.

The Commission should adopt rules that encourage LPTV and TV translator operations to partner with new entrants in any auction for vacant DTV channels made available among channels 2-4, 7-51, and 52-59. BET opposes allocating free spectrum for LPTV and TV translators who have secondary status in the current television licensing process.<sup>26/</sup> The Commission's public interest obligation to promote a diversity of viewpoints mandates that a wider pool of applicants be allowed to apply for new spectrum that could be used for DTV and other services. The Commission should encourage LPTV and TV translator participation in broadcasting and other services, however, by adopting rules that encourage existing LPTV and TV translator licensees to partner with other new entrants (a) at an auction for new DTV licenses, and (b) in conjunction with new entrants who partner with incumbent DTV broadcasters to offer supplementary or ancillary services.

- III. Carefully Structured Spectrum Fees and Auction Rules for Recovered Broadcast Spectrum for DTV and other services with preferences for minority- and women-owned businesses will promote diversity of viewpoints.

Section 336 of the Act imposes a spectrum fee on incumbent broadcasters who are assigned a DTV channel. BET submits that the Commission should treat this fee obligation not only as a source of monies for the treasury, but also as a source of diversity incentives which could be structured to foster partnerships between incumbent broadcasters and new entrants, particularly minorities and women, pursuant to Section 307(b) and Section 309(j)(3)(B) of the Act. Such incentives could be in the form of a spectrum fee credit or waiver. Additional

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for public broadcast stations.

<sup>26/</sup> 47 C.F.R. §74.703.

diversity incentives also could be structured to encourage partnership with new entrants that address other public service obligations traditionally imposed by the Commission upon broadcast television licensees in exchange for exclusive use of (a) 6 MHz channel.<sup>27/</sup> For instance, incumbent broadcasters could be encouraged to partner with new entrant minority- or-women-owned businesses on their supplementary or ancillary services by the following methods: (1) waiving their attribution limits or restrictions;<sup>28/</sup> and (2) providing them with a credit toward other broadcast public interest obligations such as EEO, Children's TV, Political Broadcasting, Public Affairs programming, and Non-commercial Broadcast limits on program sponsorships.

While Section 336(a) of the Act limits the "initial eligibility" for DTV licenses for advanced television (ATV) services to incumbent licensees and/or permit holders, once those

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<sup>27/</sup> These include *inter alia* providing programming that meets the needs of the communities of license, offering "reasonable access" "equal opportunities" and the "lowest unit rate" to candidates for political office, providing programming that serves the educational and informational needs of children, and establishing an equal employment opportunity (EEO) program to provide employment opportunities for minorities and women. Fourth FNPRM at 10545-6. BET concurs with other commentators that this minimal core of public interest obligations currently imposed on broadcast television licensees should continue to apply to the DTV channel.

<sup>28/</sup> The Commission eliminated the numerical national television ownership caps and increased the national television ownership audience reach cap to 35% on March 8, 1996. Implementation of Sections 202 (c)(1) and 202(e) of the Telecommunications Act of 1996 (National Broadcast Television Ownership and Dual Network Operations), FCC 96-91, 61 Fed. Reg. 10691 (March 15, 1996). The Commission has also recently released a Further Notice of Proposed Rulemaking, and Second Further Notice of Proposed Rulemaking to examine television ownership attribution and cross-interest, and local television ownership rules. See, Further Notice of Proposed Rulemaking, MM Docket No. 94-150, MM Docket No. 92-51, and MM Docket No. 87-154, FCC 96-436 (released November 7, 1996) and Second Further Notice of Proposed Rulemaking, MM Docket Nos. 91-221 and 87-8, FCC 96-438 (released November 7, 1996).

licensees and permittees have been fully accommodated through the allocation of DTV licenses under the Core Allocation in channels 7-51, no provision of the Act precludes new entrants from seeking DTV operating licenses in remaining areas of available spectrum or in spectrum that is recovered from the NTSC allocations (i.e., vacant DTV channels, channels 60-69, etc.)

BET submits that the Commission should allocate such remaining DTV spectrum using the competitive bidding procedures outlined in Section 309(j) of the Act.<sup>29/</sup> Moreover, in designing an appropriate system of competitive bidding for the allocation of vacant or new DTV spectrum, the Commission should follow the directive set forth in Section 309(j)(3)(B) of the Act and include safeguards which will foster pursuit of the following public interest objectives:

. . . promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses. . . and businesses owned by members of minority groups and women[.]

BET encourages the Commission to pursue these diversity objectives with respect to new entrants in the DTV spectrum market through an auction procedure that accounts for the public interest diversity characteristics outlined in Section 309(j)(3)(B). Further, BET encourages the Commission to adopt structural ownership incentives such as a waiver provision for attribution limits or joint marketing arrangements for incumbent DTV broadcasters to encourage joint ventures with minority- and women-owned DTV auction participants.

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<sup>29/</sup> Various parties supported auctioning spectrum. See, e.g., National Cable Television Association Comments filed July, 1995.

- IV. The Commission should permit flexibility for minority- and women-owned businesses to participate in the market for any available DTV licenses for new entrants.

BET believes that the definition of "small business" included in the Initial Regulatory Flexibility Analysis ("IFRA") is too restrictive, at least with respect to new entrants in DTV and other services. BET believes that minority- and women-owned businesses seeking available spectrum for DTV services should be offered the flexibility necessary to participate in that market.

V. Conclusion

The FCC has an opportunity to uphold its public interest obligation to diversity of TV broadcast ownership in this DTV Docket. For minorities and women, this is the last major opportunity to secure a piece of the TV broadcast communications bridge to the 21st Century. BET encourages the Commission to take the actions outlined in this filing.

Respectfully submitted,

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